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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NIKKI GIAVASIS, individually and on) Case No.

behalf of all others similarly situated,

) CLASS ACTION

Plaintiff,

) **COMPLAINT FOR VIOLATIONS
OF:**

VS.

)

DENT-A-MED INC. DBA HC
PROCESSING CENTER, and DOES 1
through 10, inclusive, and each of them,

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]

Defendant.

2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER

**CONSUMER
PROTECTION ACT [47
U.S.C. §227 ET SEQ.]
VIOLATIONS OF THE**

5. VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT [15 U.S.C. § 1692, ET SEQ.]

DEMAND FOR JURY TRIAL

1 Plaintiff NIKKI GIAVASIS (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of DENT-A-MED INC. dba HC
8 PROCESSING CENTER (“Defendant”) in negligently, knowingly, and/or
9 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the
10 Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby
11 invading Plaintiff’s privacy. Ancillary to the claims above, Plaintiff also brings
12 an action for damages as an individual consumer for Defendant’s violations of the
13 federal Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
14 “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive,
15 and unfair practices.

16 **JURISDICTION & VENUE**

17 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
18 a resident of California, seeks relief on behalf of a Class, which will result in at
19 least one class member belonging to a different state than that of Defendant, a
20 company with its principal place of business in Arkansas and State of
21 Incorporation in Oklahoma. Plaintiff also seeks up to \$1,500.00 in damages for
22 each call in violation of the TCPA, which, when aggregated among a proposed
23 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court
24 jurisdiction. Therefore, both diversity jurisdiction and the damages threshold
25 under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this
26 Court has jurisdiction.

27 3. Venue is proper in the United States District Court for the Central
28

1 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
2 because Defendant does business within the state of California and the Central
3 District of California.

4 **PARTIES**

5 4. Plaintiff, NIKKI GIAVASIS (“Plaintiff”), is a natural person
6 residing in Calabasas, California and is a “person” as defined by *47 U.S.C. § 153*
7 (39), and is a “consumer” as defined by the FDCPA, *15 U.S.C. §1692a(3)*.

8 5. Defendant, DENT-A-MED INC. dba HC PROCESSING CENTER
9 (“Defendant”), is a business that loans money to consumers and is a “person” as
10 defined by *47 U.S.C. § 153 (39)*. Further, Defendant was a company engaged, by
11 use of the mails and telephone, in the business of collecting a debt from
12 PLAINTIFF which qualifies as a “debt,” as defined by *15 U.S.C. §1692a(5)*.
13 DEFENDANT regularly attempts to collect debts alleged to be due another, and
14 therefore is a “debt collector” as defined by the FDCPA, *15 U.S.C. §1692a(6)*.

15 **FACTUAL ALLEGATIONS**

16 6. At various and multiple times prior to the filing of the instant
17 Complaint, including within the one year preceding the filing of this Complaint,
18 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.

19 7. Beginning in and around 2015, Defendant contacted Plaintiff on her
20 cellular telephone in an attempt to collect an alleged outstanding debt.

21 8. Defendant was calling Plaintiff on her cellular telephone number
22 ending in -9876.

23 9. Defendant used an “automatic telephone dialing system”, as defined
24 by *47 U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the
25 debt allegedly owed.

26 10. Defendant called Plaintiff on her cellular telephone with enough
27 frequency to constitute harassment under the circumstance.

28 11. Defendant’s calls constituted calls that were not for emergency

purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

FACTUAL ALLEGATIONS – FDCPA

14. In addition to the facts pled above, at various times prior to the filing of the instant complaint, including within one year preceding the filing of this complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an alleged outstanding debt by placing phone calls and leaving voicemails.

15. On or about April of 2015, Plaintiff began receiving numerous calls from Defendant.

16. During these telephone calls, including two voicemails, Defendant informed Plaintiff to call back Defendant at 1-877-486-3446. At no time Defendant identified itself as a debt collector calling in an attempt to collect a debt. Moreover, Plaintiff is informed, and bases thereon, that she is *not* behind in her payments. In fact, to Plaintiff's knowledge, she is caught up and current with her payments to Defendant. Defendant should not be contacting and bothering Plaintiff regarding a debt Plaintiff does not owe.

17. Due to the aforementioned conduct, Defendant has used false and deceptive practices in connection with attempts to collect an alleged debt owed from Plaintiff, which is prohibited by federal law.

18. Defendant's conduct violated the FDCPA by:

a) [Failing] to disclose in the initial written communication with the consumer and, in addition, if the initial

1 communication with the consumer is oral, in that initial
2 oral communication, that the debt collector is attempting to
3 collect a debt and that any information obtained will be
4 used for that purpose, and the failure to disclose in
5 subsequent communications that the communication is
6 from a debt collector, except that this paragraph shall not
apply to a formal pleading made in connection with a legal
action. (§ 1692e(11));

7 19. As a result of the above violations of the FDCPA, Plaintiff
8 suffered and continues to suffer injury to Plaintiff's feelings, personal
9 humiliation, embarrassment, mental anguish and emotional distress, and
10 Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages,
11 and costs and attorney's fees.
12

13 **CLASS ALLEGATIONS**
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15 20. Plaintiff brings this action individually and on behalf of all others
16 similarly situated, as a member of the proposed class (hereafter "The Class")
17 defined as follows:
18

19 All persons within the United States who received any
20 collection telephone calls from Defendant to said
21 person's cellular telephone made through the use of any
22 automatic telephone dialing system or an artificial or
prerecorded voice and such person had not previously
23 consented to receiving such calls within the four years
prior to the filing of this Complaint
24

25 21. Plaintiff represents, and is a member of, The Class, consisting of All
26 persons within the United States who received any collection telephone calls from
27 Defendant to said person's cellular telephone made through the use of any
28 automatic telephone dialing system or an artificial or prerecorded voice and such
person had not previously not provided their cellular telephone number to

1 Defendant within the four years prior to the filing of this Complaint.

2 22. Defendant, its employees and agents are excluded from The Class.
3 Plaintiff does not know the number of members in The Class, but believes the
4 Class members number in the thousands, if not more. Thus, this matter should be
5 certified as a Class Action to assist in the expeditious litigation of the matter.

6 23. The Class is so numerous that the individual joinder of all of its
7 members is impractical. While the exact number and identities of The Class
8 members are unknown to Plaintiff at this time and can only be ascertained
9 through appropriate discovery, Plaintiff is informed and believes and thereon
10 alleges that The Class includes thousands of members. Plaintiff alleges that The
11 Class members may be ascertained by the records maintained by Defendant.

12 24. Plaintiff and members of The Class were harmed by the acts of
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
14 and Class members via their cellular telephones thereby causing Plaintiff and
15 Class members to incur certain charges or reduced telephone time for which
16 Plaintiff and Class members had previously paid by having to retrieve or
17 administer messages left by Defendant during those illegal calls, and invading the
18 privacy of said Plaintiff and Class members.

19 25. Common questions of fact and law exist as to all members of The
20 Class which predominate over any questions affecting only individual members
21 of The Class. These common legal and factual questions, which do not vary
22 between Class members, and which may be determined without reference to the
23 individual circumstances of any Class members, include, but are not limited to,
24 the following:

- 25 a. Whether, within the four years prior to the filing of this
26 Complaint, Defendant made any collection call (other than a
27 call made for emergency purposes or made with the prior
28 express consent of the called party) to a Class member using

1 any automatic telephone dialing system or any artificial or
2 prerecorded voice to any telephone number assigned to a
3 cellular telephone service;

- 4 b. Whether Plaintiff and the Class members were damages
5 thereby, and the extent of damages for such violation; and
6 c. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 26. As a person that received numerous collection calls from Defendant
9 using an automatic telephone dialing system or an artificial or prerecorded voice,
10 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
11 typical of The Class.

12 27. Plaintiff will fairly and adequately protect the interests of the
13 members of The Class. Plaintiff has retained attorneys experienced in the
14 prosecution of class actions.

15 28. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Class members is impracticable. Even if every Class member could afford
18 individual litigation, the court system could not. It would be unduly burdensome
19 to the courts in which individual litigation of numerous issues would proceed.
20 Individualized litigation would also present the potential for varying, inconsistent,
21 or contradictory judgments and would magnify the delay and expense to all
22 parties and to the court system resulting from multiple trials of the same complex
23 factual issues. By contrast, the conduct of this action as a class action presents
24 fewer management difficulties, conserves the resources of the parties and of the
25 court system, and protects the rights of each Class member.

26 29. The prosecution of separate actions by individual Class members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Class members not parties to

such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

30. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the California Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-30.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

33. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

34. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*

seq.

37. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

37. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Violations of the federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

38. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-37.

39. To the extent that Defendant's actions, counted above, violated the FDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
 - Any and all other relief that the Court deems just and proper.

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1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227 et seq.**

- 5 • As a result of Defendant's willful and/or knowing violations of 47
6 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to
7 and request treble damages, as provided by statute, up to \$1,500, for
8 each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and
9 47 U.S.C. §227(b)(3)(C).
- 10 • Any and all other relief that the Court deems just and proper.

11 **THIRD CAUSE OF ACTION**

12 **Violations of the federal Fair Debt Collection Practices Act**

13 **15 U.S.C. § 1692 et seq.**

14 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
15 Defendant for the following:

- 16 A. Actual damages;
17 B. Statutory damages for willful and negligent violations;
18 C. Costs and reasonable attorney's fees,
19 D. For such other and further relief as may be just and proper.

20 **TRIAL BY JURY**

21 40. Pursuant to the seventh amendment to the Constitution of the United
22 States of America, Plaintiff is entitled to, and demands, a trial by jury.
23

24 Respectfully submitted this 4th day of April, 2016.
25

26 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
27 By: /s/ Todd M. Friedman
28 Todd M. Friedman
 Law Offices of Todd M. Friedman
 Attorney for Plaintiff